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CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES

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For The Northern Mariana Islands
By _____
(Deputy Clerk)

MC 07 - 00028

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

~~CV 07-01925~~

Case No.

EDCV07-0343

SGL (JCR)

COMPLAINT FOR BREACH OF
ORAL CONTRACT, BREACH OF
IMPLIED-IN-FACT CONTRACT,
BREACH OF FIDUCIARY DUTY,
APPOINTMENT OF A RECEIVER
AND OTHER EQUITABLE RELIEF

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an individual, Placer County Land
Investors, LLC, a California limited
liability company, and SVRB Investments,
LLC, an Arizona limited liability
company, Plaintiffs

Robert A. Russell, an individual,
Placer County Land Investors, LLC,
a California limited liability company,
and SVRB Investments, LLC, an
Arizona limited liability company

Plaintiffs,

vs.

USA Investment Partners, LLC, a
Nevada limited liability company,

Defendant.

COPY

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1 Plaintiffs, Robert A. Russell, an individual, Placer County Land
2 Investors, LLC, a California limited liability company, and SVRB Investments,
3 LLC, an Arizona limited liability company, allege:

4 **JURISDICTION AND VENUE**

5 1. This Court has jurisdiction over this action pursuant to 28 U.S.C.
6 § 1332(a) as a result of the diversity of citizenship of the parties.

7 2. Venue in the United States District Court for the Central District
8 of California is proper under 28 U.S.C. § 1391(a)(2).

9 **THE PARTIES**

10 3. **Plaintiff Placer County Land Investors, LLC** ("Placer"), is a
11 limited liability company organized under the laws of the State of California. The
12 members of Placer are USA Investment Partners, LLC ("USAIP"), Robert A.
13 Russell ("Russell"), and Land & Castle Investments, LLC ("L&CI"). USAIP owns
14 an 88% controlling membership interest in Placer. Russell owns a 10% membership
15 interest in Placer. L&CI owns a 2% membership interest in Placer. Russell has
16 been the manager of Placer. On March 20, 2007, Russell received a letter (the
17 "Removal Letter") from USAIP seeking to replace Russell as manager of Placer
18 with USAIP.

19 4. **Plaintiff SVRB Investments, LLC** ("SVRB"), is a limited
20 liability company organized under the laws of the State of Arizona. The members
21 of SVRB are USAIP and Russell. USAIP owns a 50% membership interest in
22 SVRB. Russell owns a 50% membership interest in SVRB. Russell is the manager
23 of SVRB.

24 5. **Plaintiff Robert A. Russell**, an individual, is a resident of the
25 State of Arizona.

26 6. **Defendant USA Investment Partners, LLC**, is a limited
27 liability company organized under the laws of the State of Nevada. The members of
28 USAIP are Thomas A. Hantges ("Hantges") and Joseph D. Milanowski

1 ("Milanowski"). Hantges owns a 57% membership interest in USAIP. Milanowski
 2 owns a 43% membership interest in USAIP. Milanowski is the manager of USAIP.
 3 Hantges and Malinowski are collectively referred to herein as the "Members".

4 USAIP ENTERPRISE

5 7. The primary assets of USAIP are equity interests in entities that
 6 own real estate development projects in various stages of development, primarily
 7 located in California and substantially located within the judicial district of this
 8 Court.

9 8. Currently, entities affiliated with the members of USAIP are the
 10 subject of bankruptcy cases (the "Bankruptcy Cases") pending in the United States
 11 Bankruptcy Court for the District of Nevada. These entities include USA
 12 Commercial Mortgage Company ("USACM"), USA Capital Realty Advisors, LLC
 13 ("USACRA"), USA Securities, LLC ("USAS"), USA Capital First Trust Deed Fund,
 14 ("First"), and USA Capital Diversified Trust Deed Fund, LLC ("Diversified"). Prior
 15 to the commencement of the Bankruptcy Cases, USAIP had received financial
 16 support in the way of transfers and loans from USACM and some of the related
 17 entities that are debtors in the Bankruptcy Cases.

18 9. The primary assets of USAIP include:

19 A. USAIP owns a 50% membership interest in Ashby USA,
 20 LLC ("Ashby"). Ashby is a limited liability company organized under the laws of
 21 the State of California. The manager of Ashby is Ashby Development. Ashby owns
 22 real property commonly known as Roripaugh Ranch. Roripaugh Ranch is an
 23 approximately 800-acre master planned development with approximately 1,800 lots
 24 located in the City of Temecula in southwest Riverside County, California.
 25 Plaintiffs understand and believe that the project is fully entitled with construction
 26 underway.

27 B. USAIP owns a 50% membership interest in Capital Land
 28 Investors, LLC ("CLI") and Random Development, LLC ("RD"). CLI and RD are

1 limited liability companies organized under the laws of the State of California. The
2 manager of CLI and RD is Jabral Investments, an entity organized under the laws of
3 the State of California. CLI and RD own a real estate project commonly known as
4 Stoneridge. Stoneridge is an approximately 640-acre master planned development
5 with approximately 2,200 lots located in Riverside County, California. The
6 Plaintiffs understand and believe that this project is currently in the entitlement
7 process.

8 C. USAIP owns a 50% membership interest in Oak Mesa
9 Investors, LLC ("OMI"), and Buffalo Land Development, LLC ("BLD"). The
10 manager of OMI and BLD is Jabral Investments. OMI and BLD own a real estate
11 project commonly known as Oak Valley. Oak Valley is an approximately 1,500-
12 acre master planned development with approximately 3,000 lots located in
13 Calimesa, California.

14 D. USAIP owns an 88% controlling interest in Placer County
15 Land Investors, LLC, as a non-managing member. Russell is the manager of Placer
16 and owns a 10% membership interest in Placer. Placer owns a real estate project
17 consisting of approximately 325 acres located in Placer County, California. This
18 property is planned for approximately 1,000 residential lots.

19 E. USAIP owns a 69% membership interest in HMA Sales,
20 LLC ("HMA"). HMA is a limited liability company organized under the laws of the
21 State of Nevada. HMA owned the Royal Hotel, a 228 room hotel located in on
22 approximately 2.5 acres in Las Vegas, Nevada. Plaintiffs understand and believe
23 that the Royal Hotel Property was sold for approximately \$29,000,000 pursuant to a
24 transaction that closed in December, 2006.

25 F. USAIP owns a 55 2/3% membership interest in Tanamera
26 Properties, LLC ("Tanamera Properties"), a limited liability company organized
27 under the laws of the State of Nevada. The other members of Tanamera Properties
28 are DDH Financial ("DDH") and B&L Investment ("B&L"). The Manager of

1 Tanamera Properties is DDH. Tanamera Properties is an entity that is a holding
2 company for several real estate development entities that own real property located
3 in Nevada.

4 G. USAIP owns a 50% membership interest in Tanamera
5 Residential Group ("Tanamera Homes"). Tanamera Homes is a name used by
6 several entities that operate as a home building company.

7 H. USAIP owns a 70% membership interest in Bundy
8 Canyon Land Development, LLC ("Bundy"). Bundy is a limited liability company
9 organized under the laws of the State of California. Bundy owns approximately 175
10 acres of real property between Murrieta, California and Lake Elsinore, California.

11 I. USAIP owns 100% of the membership interests in USA
12 Investors VI, LLC ("Hotel Zoso"). Hotel Zoso is 165-room hotel property situated
13 on 2.5 acres of leased land at 150 S. Indian Canyon Drive in Palm Springs,
14 California. The Hotel Zoso property is currently under contract for sale. Plaintiffs
15 are informed that, in December, 2006, the debtors in the Bankruptcy Cases filed an
16 involuntary bankruptcy petition against Hotel Zoso.

17 J. USAIP owns a 55% membership interest in Phillips USA,
18 LLC ("Phillips"). The Phillips Development Company, Inc. ("PDC"), owns a 45%
19 membership interest in Phillips. PDC is the manager of Phillips. Plaintiff is
20 informed and believes that Phillips has entered into agreements to purchase
21 approximately 930 acres of real property located adjacent to the Ortega Highway
22 between San Juan Capistrano, California, and Lake Elsinore, California.

23 K. USAIP owns a 50% membership interest in Opaque Land
24 Development, LLC ("Opaque"). Unlimited Holdings, Inc. ("Unlimited"), owns the
25 other 50% membership interest in Opaque. Unlimited is the managing member of
26 Opaque. Opaque owns approximately 15 acres of commercial zoned real property
27 located in southwest Las Vegas, Nevada.

28

1 L. USAIP owns a 50% membership interest in Cornman-
2 Toltec, LLC ("Cornman"). Unlimited holds the other 50% membership interest in
3 Cornman. Unlimited is the managing member of Cornman. Cornman owns 160
4 acres of residential real property located in Casa Grande, Arizona.

5 M. USAIP owns a 50% membership interest in SVRB.
6 SVRB owns approximately 24 acres of real property zoned for commercial-
7 industrial use in the south part of Albuquerque, New Mexico.

8 N. USAIP owns 100% of the membership interests in Tree
9 Moss, LLC ("Tree"). Tree is a limited liability company organized under the laws
10 of the State of California. Tree owns a 101-room condominium project located on
11 approximately 2.5 acres of leased real property at 140 S. Calle Encilia in Palm
12 Springs, California. Plaintiffs are informed and believe that Tree entered into a
13 Sales, Marketing, and Commission Agreement with a third-party to sell 63 units that
14 it owns at the condominium project. Thereafter, the debtors in the Bankruptcy
15 Cases filed an involuntary bankruptcy petition against Tree in or about December
16 2006.

17 O. USAIP owns a 50% membership interest in Colt Gateway,
18 LLC ("Colt"). The manager of Colt is America Holdings, Inc. Colt owns real
19 property consisting of approximately 17 acres located in Hartford, Connecticut,
20 where the former Colt Arms Manufacturing Plant was located.

21 P. USAIP owns a 50% membership interest in Happy Valley,
22 LLC ("Happy"). Happy owns approximately 2 acres of real property located in
23 Palm Springs, California.

24 Q. USAIP owns 100% of the membership interests in
25 Haspinov, LLC ("Haspinov"). Haspinov owns real property located in Las Vegas,
26 Nevada, upon which is situated on approximately 10,000 square foot office building
27 leased to USACM.

28

1 R. Plaintiffs are informed and believe that USAIP may hold
2 equity or other interests in various entities not identified above owning real property
3 and/or other assets.

4 **EXTREME AND EXTRAORDINARY CIRCUMSTANCES**

5 10. Hantges and Milanowski are the subject of an investigation
6 requested by the United States Securities and Exchange Commission (the "SEC")
7 and conducted by the Federal Bureau of Investigation (the "FBI") in connection
8 with the business and operations of USAIP and various related entities.

9 11. USAIP has substantial liabilities under guarantees of loans made
10 to entities in which USAIP holds a membership interest. USAIP is also obligated to
11 Diversified pursuant to a loan that may amount to as much as \$75 million or more.
12 This loan is secured by a general pledge of the membership interests held by
13 USAIP.

14 12. Over the course of several years, the bulk of the capitalization for
15 USAIP was provided by contributions from USACM. In May, 2006, to the
16 detriment of other creditors of USAIP, including Plaintiffs, USAIP executed a
17 promissory note in favor of USACM and entered a Security Agreement with
18 USACM granting a security interest in a substantial portion of its assets to secure
19 repayment of the promissory note. The amount of this secured claim is in excess of
20 \$58,000,000.

21 13. USAIP is controlled by Hantges and Milanowski. The Members
22 have admitted to Plaintiffs that during the pendency of the ongoing investigation by
23 the SEC and/or the FBI relating to their activities, they have been and will continue
24 to be precluded from effectively managing the operations of USAIP. Plaintiffs
25 understand and believe that the investigation is ongoing.

26 14. On December 25, 2006, in the adversary proceeding titled USA
27 Commercial Mortgage Company v. HMA Sales, LLC, Adversary No. 06-01256-
28 LBR (the "Adversary Action"), brought in the United States Bankruptcy Court for

1 the District of Nevada related to the Bankruptcy Cases jointly administered under
2 Case No. BK-S-06-10725 LBR, and pending in United States Bankruptcy Court for
3 the District of Nevada, Las Vegas Division, the plaintiffs in the Adversary Action
4 filed their Complaint for, inter alia, a Temporary Restraining Order ("TRO")
5 relating to assets of USAIP, and for the appointment of a receiver for an entity
6 (HMA Sales, LLC) 90% owned by USAIP.

7 15. On January 3, 2007, the Honorable Linda B. Riegler, United
8 States Bankruptcy Judge in the jointly administered Bankruptcy Cases entered the
9 TRO. Plaintiffs are informed and believe that the TRO remains in effect.

10 16. In their Fifth Claim for Relief contained in the complaint
11 commencing the Adversary Action, the debtors in the Bankruptcy Cases requested
12 the appointment of a receiver for a subsidiary of USAIP. Such relief could not be
13 Ordered by Bankruptcy Judge Riegler since 11 U.S.C. § 105(b) provides that "a court
14 may not appoint a receiver in a case under this title [the Bankruptcy Code]."

15 17. USAIP has significant unpaid, delinquent obligations, including
16 those owing to Plaintiffs, and unperformed commitments, including those made to
17 Plaintiffs.

18 18. Parties, including Plaintiffs, with claims against USAIP and/or
19 with equity interests in entities in which USAIP also holds an equity interest face
20 imminent and irreparable harm to their opportunity for recovery on their claims
21 and/or equity interests.

22 19. The assets of USAIP are at risk as long as USAIP remains under
23 the control of the Members.

24 20. USAIP is unable to effectively function and the assets of USAIP
25 are diminishing in value as a result of the lack of any party currently in a position to
26 control the direction and operations of USAIP.

1 21. Loans with respect to real estate development projects owned by
2 entities in which USAIP holds membership interests, including entities in which
3 Plaintiffs also hold membership interests, are delinquent.

4 22. The Removal Letter received by Placer from USAIP on March
5 20, 2007, threatens Placer with severe, immediate and irreparable harm.

6 23. With its Members under criminal investigation, USAIP is not
7 capable of effectively managing Placer.

8 24. Unless control of USAIP is promptly removed from Milanowski
9 and Hantges, Placer and all other creditors of USAIP are faced with severe,
10 immediate and irreparable harm.

11 25. Parties, including Plaintiffs, with claims against USAIP and/or
12 with equity interests in entities in which USAIP also holds an equity interest face
13 imminent and irreparable harm to their opportunity for recovery on their claims
14 and/or equity interests.

15 26. The assets of USAIP are at risk as long as USAIP remains under
16 the control of the Members.

17 27. Various real estate development projects owned by entities in
18 which USAIP owns membership interests, including those in which Plaintiffs also
19 own membership interests, are in need of refinancing.

20 28. Lenders have advised Plaintiffs that they will not provide
21 financing to any entity in which equity interests are held by an entity controlled by
22 the Members.

23 29. In its current state, USAIP is unable to perform its obligations or
24 meet its commitments to its creditors, including Plaintiffs.

25 **USAIP's COMMITMENTS AND OBLIGATIONS TO PLAINTIFFS**

26 30. USAIP made various commitments, promises and agreements to
27 and with Russell and Placer, which they relied upon, and which USAIP has failed to
28

1 fulfill. In reliance on these promises, beginning in July 2005, Russell devoted no
2 less than two days of my time per week to the Placer Development.

3 31. USAIP promised to reimburse all of Russell's expenses incurred
4 in connection with the Placer Development. In reliance on this promise, Russell
5 incurred expenses amounting to more than \$20,000 and USAIP has failed to
6 reimburse Russell's expenses.

7 32. USAIP represented to Placer that it would ensure that the debt
8 secured by the real property owned by Placer would be paid on a current basis and
9 that all ongoing expenses connected with the real property would also be paid by
10 USAIP. USAIP has failed to fulfill these promises.

11 33. The debt secured by the real property owed by Placer is in
12 default, real estate taxes secured by the real property amounting to approximately
13 \$290,000 are delinquent, and contributions owing to the Master Plan Association
14 (the "Assbociation") of which Placer is a member are delinquent in an amount
15 exceeding \$500,000.

16 34. Placer relied on the promises of USAIP that it would fund all
17 expenses on a current basis relating to the development of the real property owned
18 by Placer in entering into various consulting arrangements with environmental
19 engineers, wetlands engineers, civil engineers, and other consultants needed in order
20 to develop the real property owned by Placer. USAIP has failed to fund the
21 payments owing by Placer to these consultants and, as a result, the consultants have
22 stopped work on the real property project owned by Placer and the development
23 process has stalled. This has caused significant damage to Placer and poses an
24 imminent threat to destroy the development process with regard to the real property
25 owned by Placer.

26 35. The failure of USAIP to meet its commitments has placed Placer
27 in dire financial straits and has left Placer facing imminent and irreparable harm.
28

1 36. Loans secured by the real property owned by Placer are in
2 default, interest is accruing at the default rate, and foreclosure proceedings may be
3 imminent.

4 37. If the real estate taxes owing with regard to the real property
5 owned by Placer are not brought current, the property will be eliminated from the
6 overall 5,000 acre master development plan in which the Placer property is currently
7 a participant. The County within which the Placer real property is located will not
8 approve any plans if the taxes are not current and if Placer remains delinquent with
9 regard to its contribution owing to the Association, it can be removed from the
10 Association on that basis as well. If Placer is removed from the Association, then it
11 is virtually assured that any development of the real property owned by Placer will
12 be stalled for a period as long as seven to ten years and that the land will be forced
13 to remain in its current state where it could only be used as farmland.

14 38. Having USAIP, under the control of Milanowski and Hantges, as
15 the majority equity holder of Placer has precluded Placer from acquiring any
16 substitute financing that would allow it to address these urgent issues.

17 39. Russell has suffered lost profits and other damages as a result of
18 USAIP's failure to fulfill its promises, commitments and obligations and USAIP's
19 breach of its fiduciary obligations with respect to Placer and SVRB in an amount in
20 excess of \$5,000,000.

21 40. Placer has suffered lost profits and other damages, in an amount
22 in excess of \$5,000,000, as a result of USAIP's failure to fulfill its promises,
23 commitments and obligations and USAIP's breach of its fiduciary duty.

24 41. SVRB has suffered lost profits and other damages in an amount
25 in excess of \$50,000,000 as a result of USAIP's failure to fulfill its promises,
26 commitments and obligations and USAIP's breach of its fiduciary duty.

27

28

FIRST CAUSE OF ACTION

(Breach of Oral Contract re Placer)

42. Plaintiffs hereby incorporate by reference paragraphs 1 to 41 of the Complaint as though fully set forth herein.

43. USAIP has breached promises and commitments made to and agreements with Placer. These breaches have resulted in damages, lost profits and additional costs to Placer, in a total sum in excess of \$5,000,000.

SECOND CAUSE OF ACTION

(Breach of Implied Contract re Placer)

44. Plaintiffs hereby incorporate by reference paragraphs 1 to 43 of the Complaint as though fully set forth herein.

45. Based on the facts as set forth above, both Placer on the one side, and USAIP, on the other side, understood and agreed that USAIP was obligated to fund the Placer development, thus creating an implied-in-fact contract between the parties (the "Implied Placer Contract").

46. USAIP breached the implied Placer Contract. Said breach resulted in damages, lost profits and additional costs to Placer in the total sum in excess of \$5,000,000.

THIRD CAUSE OF ACTION

(Breach of Oral Contract re SVRB)

47. Plaintiffs hereby incorporate by reference paragraphs 1 to 46 of the Complaint as though fully set forth herein.

48. USAIP breached promises and commitments to and agreements with SVRB. These breaches resulted in damages, lost profits and additional costs to SVRB, in a total sum in excess of \$5,000,000.

FOURTH CAUSE OF ACTION

(Breach of Implied SVRB Contract)

49. Plaintiffs hereby incorporate by reference paragraphs 1 to 48 of the Complaint as though fully set forth herein.

50. Based on the facts as set forth above, both SVRB on the one side, and USAIP, on the other side, understood and agreed that USAIP was obligated to fund the SVRB development, thus creating an implied-in-fact contract between the parties (the "Implied SVRB Contract").

51. USAIP breached the Implied SVRB Contract. Said breach resulted in damages, lost profits and additional costs to SVRB in a total sum exceeding \$5,000,000.

FIFTH CAUSE OF ACTION

(Breach of Oral Contract re Russell)

52. Plaintiffs hereby incorporate by reference paragraphs 1 to 51 of the Complaint as though fully set forth herein.

53. USAIP breached promises and commitments to and agreements with Russell. These breaches results in damages, lost profits and additional costs to Russell in an amount in excess of \$5,000,000.

SIXTH CAUSE OF ACTION

(Breach of Implied Russell Contract)

54. Plaintiffs hereby incorporate by reference paragraphs 1 to 53 of the Complaint as though fully set forth herein.

55. Based on the facts set forth above, both Russell on the one side, and USAIP, on the other side, understood and agreed that USAIP was obligated to fund the development of the Placer and SVRB projects and to reimburse Russell for his expenses incurred in connection with said projects, thus creating an implied-in-contract between the parties (the "Implied Russell Contract").

1 56. USAIP breached the Implied Russell Contract. Said breach
2 resulted in damages, lost profits and additional costs to Russell in a total sum
3 exceeding \$5,000,000.

4
5 **SEVENTH CAUSE OF ACTION**

6 **(Breach of Fiduciary Duty Owed to Placer)**

7 57. Plaintiffs hereby incorporate by reference paragraphs 1 to 41 of
8 the Complaint as though fully set forth herein.

9 58. USAIP owed a fiduciary duty to Placer. USAIP breached said
10 duty. As a direct result of USAIP's breach of its fiduciary duty owing to Placer,
11 Placer has suffered lost profits, expenses, and other damages in an amount in excess
12 of \$5,000,000.

13
14 **EIGHTH CAUSE OF ACTION**

15 **(Breach of Fiduciary Duty Owed to SVRB)**

16 59. Plaintiffs hereby incorporate by reference paragraphs 1 to 41 of
17 the Complaint as though fully set forth herein.

18 60. USAIP owed a fiduciary duty to SVRB. USAIP breached said
19 duty. As a direct result of USAIP's breach of its fiduciary duty owing to SVRB,
20 SVRB has suffered lost profits, expenses, and other damages in an amount in excess
21 of \$5,000,000.

22
23 **NINTH CAUSE OF ACTION**

24 **(Breach of Fiduciary Duty Owed to Russell)**

25 61. Plaintiffs hereby incorporate by reference paragraphs 1 to 41 of
26 the Complaint as fully set forth herein.

27 62. USAIP owed a fiduciary duty to Russell. USAIP breached said
28 duty. As a direct result of USAIP's breach of its fiduciary duty owing to Russell,

1 Russell has suffered lost profits, expenses, and other damages in an amount in
2 excess of \$5,000,000.

3 **TENTH CAUSE OF ACTION**

4 **(Appointment of a Receiver and other Injunctive Relief)**

5 63. Plaintiffs hereby incorporate by reference paragraphs 1 to 41 of
6 the Complaint as fully set forth herein.

7 64. The appointment of a receiver for USAIP is appropriate and
8 necessary to preserve and protect the assets of USAIP and the opportunity for
9 recovery for creditors of USAIP.

10 65. Injunctive relief connected with the appointment of a receiver for
11 USAIP should be granted in order to protect Plaintiffs and other creditors of USAIP
12 and parties with equity interests in entities in which USAIP also holds an equity
13 interest from real, immediate and irreparable harm to their opportunity for recovery
14 on their claims and/or the preservation and protection of the value of their equity
15 interests.

16 **WHEREFORE**, Plaintiffs pray for judgment against USAIP as
17 follows:

18 1. For compensatory damages owing to Placer for breach of
19 contract, breach of implied-in-fact contract, and breach of fiduciary duty in the sum
20 of not less than \$5,000,000;

21 2. For compensatory damages owing to SVRB for breach of
22 contract, breach of implied-in-fact contract, and breach of fiduciary duty in the sum
23 of not less than \$5,000,000;

24 3. For compensatory damages owing to Russell for breach of
25 contract, breach of implied-in-fact contract, and breach of fiduciary duty in the sum
26 of not less than \$5,000,000;

27 4. For the appointment of a receiver for USAIP and the granting of
28 associated injunctive relief;

5. For interest on compensatory damages as provided by law;
6. For costs of suit, including reasonable attorneys' fees; and
7. For such other and further relief as the Court deems just and proper.

DATED: March 23, 2007

Respectfully submitted,

SulmeyerKupetz
A Professional Corporation

By: 

David S. Kupetz

Attorneys for Robert A. Russell, an individual, Placer County Land Investors, LLC, a California limited liability company, and SVRB Investments, LLC, an Arizona limited liability company, Plaintiffs

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